

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

SIGFRIDO TORRES-LAZARINI,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil No. 05-1136 (JAF)

MEMORANDUM ORDER

This is a medical malpractice suit by Sigfrido Torres-Lazarini, a veteran who, because of his previous military status, sought medical treatment at the San Juan Veterans Administration Hospital ("VA Hospital) for a number of years. A bench trial concluded today.

Plaintiff has a history of previous lawsuits against the Veterans Administration which we list here:

- (1) 85-0796 (PG) - case eventually dismissed;
- (2) 92-1185 (JP) - case dismissed and affirmed on appeal;
- (3) 97-1792 (HL) - settlement reached by the parties;
- (4) 97-1793 (PG) - case dismissed and affirmed on appeal,
- and
- (5) 04-1511 (RLA) - case dismissed.

In addition to the previous civil litigation, the Plaintiff has been arrested three times at the VA Hospital facilities for apparent disorderly conduct motivated by his disagreements over time with the medical treatment received by him at said hospital. Charges were

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1 eventually dismissed. The Plaintiff has engaged in a 52-year-long
2 quest of complaints against the VA Hospital since his Korean conflict
3 service with the Armed Forces.

4 This case arises from a fall that the Plaintiff sustained on or
5 about September 9, 2002, in his home. The Plaintiff came to the VA
6 Hospital and was seen by Sylvia Rodríguez, M.D., his primary care
7 physician, who has supervised his treatment since the year 1997. The
8 Plaintiff related to Dr. Rodríguez that he fell, injuring his right
9 shoulder, and had pain and difficulty in movement of that upper
10 extremity. X-rays were ordered and a physical examination was
11 performed. Dr. Rodríguez offered Plaintiff pain/anti-inflammatory
12 medication which he did not accept. Dr. Rodríguez then recommended
13 that he apply ice to the injured area.

14 The September 9, 2002, X-ray showed that this 70+ year-old male
15 had bone spurs in his right shoulder, narrowing of the joint spaces,
16 degenerative illness of the joints, and signs of osteopenia, which is
17 a precursor of osteoporosis. No fractures were found and he was told
18 to return to the clinic in two weeks if he did not improve.
19 Plaintiff did not follow Dr. Rodríguez' advice and did not return to
20 the clinic for follow-up, his next visit being in mid-November 2002.

21 Dr. Rodríguez testified that by mid-November 2002 the
22 Plaintiff's right shoulder had not improved and physical therapy was
23 recommended, which the Plaintiff declined. She "emphatically" tried
24 to convince him to receive physical therapy, but once again he

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1 declined. Plaintiff, however, accepted that a densitometry study be
2 performed. Dr. Rodríguez also gave him specific instructions for a
3 home exercise program in lieu of the recommended physical therapy.

4 On December 20, 2002, the Plaintiff visited Dr. Rodríguez and
5 expressed a long history of complaints against the VA Hospital.
6 Specifically, Plaintiff stated that he did not want to return to the
7 VA Hospital ever again. Dr. Rodríguez gave him an open appointment
8 for Plaintiff to come see her whenever he wanted.

9 There is an emergency room record dated July 9, 2004, generated
10 because of an apparent dental abscess. On that occasion, the
11 Plaintiff again complained about his problems with the VA Hospital,
12 made reference to previous lawsuits he had filed, and expressed that
13 he had a "problem" with Dr. Sylvia Rodríguez. He did not want her as
14 his primary physician anymore.

15 On August 2, 2004, because of his multiple complaints, the
16 Veterans Administration asked Plaintiff to discuss any issues he had
17 with the hospital facility. He said goodbye to Dr. Rodríguez and
18 confirmed that he did not want any additional evaluations at the VA
19 Hospital. Dr. Rodríguez confronted him on that particular occasion
20 and the Plaintiff assured her that he had no problems with her - he
21 only wanted to resolve administrative matters before receiving
22 further evaluation and treatment.

23 Because of the multiple complaints that the Plaintiff had
24 presented, arrangements were made for him to meet not only with

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1 Dr. Rodríguez, but also with the Chief-of-Staff at the Hospital. The
2 densitometry study results were explained to him and he was offered
3 follow-up services, including an additional shoulder evaluation which
4 he refused. Eventually, an MRI was ordered and he met with the
5 Chief-of-Staff. The MRI revealed that he had tendon atrophy with
6 full tear of some shoulder tendons.

7 On August 27, 2004, the Plaintiff returned for follow-up with
8 Dr. Rodríguez. She discussed the status of his right shoulder and a
9 dental problem with him, and he accepted receiving medication for
10 osteopenia. He was again offered physical therapy for the shoulder
11 which he refused until he verified the results of the MRI. The MRI
12 results were discussed with him over a telephone appointment.
13 Because of the many degenerative changes, he was referred for an
14 orthopedic evaluation. The Orthopedics Department conducted an
15 evaluation and offered him shoulder replacement surgery, which he
16 rejected. The Plaintiff had apparently improved somewhat by then but
17 had fallen again in the interim. The shoulder seemed to be the main
18 problem, although a medical condition in a knee appeared to take
19 precedence over the shoulder complaints.

20 On October 15, 2005, the Plaintiff visited the VA Hospital for
21 an ophthalmologic consultation. While riding a motorcycle, an object
22 lodged in his eye and he visited the VA Hospital to have the
23 condition treated.

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1 The court received the testimony of a reputed Orthopedic surgeon
2 and consultant, Carlos Grovas-Badrena, M.D. Dr. Grovas checked the
3 medical record from beginning to end, conducted a physical
4 examination of the Plaintiff, and made an assessment. He found that
5 the treatment offered by the VA Hospital was in full compliance with
6 the standards of the medical profession for the type of soft tissue
7 injury suffered by this elderly veteran. He found that the fact that
8 an MRI study was not immediately performed when the Plaintiff first
9 visited Dr. Rodríguez on September 9, 2002, is not a deviation of
10 standard, acceptable medical practices. The X-rays taken on that
11 occasion were negative, Plaintiff refused the conservative treatment
12 offered to him, he missed appointments, rejected physical therapy,
13 and refused to cooperate with the staff at the VA Hospital in
14 assessing and treating his shoulder injury as Dr. Rodríguez
15 originally intended. The MRI study was not indicated at the time,
16 the same was eventually done more than anything else to please the
17 Plaintiff, who because of his age and multiple falls, had a serious
18 degenerative shoulder condition, in anticipation of a last resort
19 offer of shoulder replacement surgery.

20 Having had the benefit of assessing issues of credibility, and
21 having perceived the obsession that this Plaintiff has against the VA
22 Hospital and its medical staff, we can only find on this record that
23 Plaintiff failed to prove any medical malpractice on the part of the
24 VA Hospital or its staff as a result of the injuries he suffered when

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1 he fell at home on September 9, 2002. His subsequent complications
2 were in part his own fault for failing to follow recommended
3 treatment and for failing to recognize that, because of his age,
4 multiple other falls, and degenerative joint illness, nothing could
5 be done on September 9, 2002, to miraculously restore his shoulder to
6 one consistent with that of a younger individual with no disease.

7 We also find an element of exaggeration in the degree of
8 limitation that this Plaintiff claims to have. This man, who has
9 suffered from vertigo for years, had enough good movement of his
10 shoulder to ride a motorcycle in 2005. As Dr. Grovas testified, this
11 requires a substantial amount of flexibility in the arm and shoulder
12 which a person as disabled as Plaintiff claims to be cannot indeed
13 possess.

14 The case is dismissed for failure to prove any acceptable
15 medical malpractice on the part of Dr. Sylvia Rodríguez or the VA
16 Hospital.

17 Judgment will be entered accordingly.

18 **IT IS SO ORDERED.**

19 San Juan, Puerto Rico, this 25th day of September, 2006.

20 S/José Antonio Fusté
21 JOSE ANTONIO FUSTE
22 U. S. District Judge